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Before the

Federal Communications Commission

Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.202(b).

Table of Allotments.

FM Broadcast Stations.

(Portland and Seaside, Oregon)

MM Docket No. 96-212

RM-8884

NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE

Adopted: October 11, 1996

Released: October 18, 1996

Comment Date: December 9, 1996

Reply Comment Date: December 24, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Radio Systems of Miami, Inc. ("petitioner"), requesting the substitution of Channel 254C1 for Channel 253C at Portland, Oregon, and the modification of Station KUPL-FM's license to specify operation on the lower class channel. To accommodate the allotment at Portland, petitioner also requests the substitution of Channel 235A or Channel 272A for Channel 255A at Seaside, Oregon. Petitioner states that it will apply for Channel 254C1, if allotted to Portland.

2. Petitioner states that the substitution of channels at Portland will enable Station KUPL-FM to upgrade the service it provides to Portland. It states that because of an IF (intermediate frequency) short-spacing between Station KUPL-FM and TV Station KOIN-TV, petitioner cannot locate its transmitter in the West Hills where all the other Portland stations are located. As a result, petitioner states that it has been forced to use an FM translator, K251AD, Beaverton, Oregon, to overcome terrain-induced shading and provide a consistent signal to some areas of Portland within its 3.16 mV/m principal community contour. However, if Station KUPL-FM's authorized channel is changed from 253C to Channel 254C1, the IF short-spacing to Station KOIN-TV would be eliminated and the station could relocate to Station KOIN-TV's tower. In addition, it would be unnecessary for Station KUPL-FM to use a translator station.

3. Petitioner states that Channel 254C1 at Portland would be short-spaced to Channel 255A at Seaside, Oregon. Thus, it seeks the substitution of either Channel 235A or Channel 272A for Channel 255A at Seaside. Petitioner points out that the Commission cancelled the construction permit held by Ken's Corporation ("Ken's") for Channel 255A at Seaside and deleted the station's call sign, KULU(FM). Therefore, according to petitioner, the substitution would not

adversely affect any party.

4. We believe petitioner's proposal warrants consideration since the substitution of Channel 254C1 for Channel 253C at Portland could enable Station KUPL-FM to improve its coverage area. We will also propose to substitute either Channel 235A or Channel 272A for Channel 255A at Seaside, Oregon. On August 8, 1996, the Commission cancelled the construction permit issued to Ken's and deleted the proposed Seaside station's call letters, KULU(FM). However, on September 11, 1996, Ken's filed a petition for reconsideration of the cancellation and an application (BPH-960911JA) to replace the expired construction permit. Thus, until such time as the Commission acts on Ken's application, it remains a valid permittee. Therefore, we are issuing an Order to Show Cause to Ken's as to why its channel should not be modified to either Channel 235A or Channel 272A. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for costs incurred. See Circleville, Ohio, 8 FCC 2d 159 (1967). In this case, petitioner did not state an intention to reimburse the Seaside permittee because it believed that Channel 255A at Seaside was unoccupied,. However, in light of Ken's petition that the expired construction permit be reinstated, we request that petitioner state its intention to reimburse the permittee, should it remain so, for the reasonable costs associated with the change of channel.

Engineering Summary

5. Channel 254C1 can be allotted to Portland in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.6 miles) west to accommodate petitioner's desired transmitter site. Channels 235A and 272A can both be allotted to Seaside at the transmitter site set forth in Station KULU(FM)'s construction permit, which is 10.1 kilometers (6.3 miles) south.¹ Canadian concurrence in all of the allotments is required since both of the communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Portland, Oregon	222C, 229C, 238C, 246C, 253C, 258C1, 262C, 266C, 270C	222C, 229C, 238C, 246C, 254C1, 258C1, 262C, 266C, 270C

¹ The coordinates for Channel 254C1 at Portland are 45-30-58 NL; 122-43-59 WL. The coordinates for Channels 235A and 272A at Seaside are 45-54-35 NL; 123-56-07 WL.

Seaside, Oregon

251A, 255A

251A, 272A or 235A

7. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Ken's Corporation, permittee of Station KULU(FM), Seaside, Oregon, SHALL SHOW CAUSE why its permit SHOULD NOT BE MODIFIED to specify operation on Channel 253A or Channel 272A, as proposed herein, instead of the present Channel 255A.

8. Pursuant to Section 1.87 of the Commission's Rules, Ken's Corporation may, not later than December 9, 1996, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Ken's Corporation to furnish additional information. If Ken's Corporation raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Ken's Corporation will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the permittee of Station KULU(FM), as follows: Ken's Corporation, P.O. Box 1161, Seaside, OR 97138.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before December 9, 1996, and reply comments on or before December 24, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John R. Feore, Jr., Esq.
H. Anthony Lehv, Esq.
Dow, Lohnes & Albertson, P.L.L.C.
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12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.